

### **REMARKS**

The application presently contains claims 1-3. In the Office Action mailed 29 November, 2005 the Examiner required restriction to one of the following inventions under 35 U.S.C.121 (*see* instant Office Action, page 2):

Group I: Claim 1, drawn to polynucleotides, classified in class 536, subclasses 23.6.

Group II: Claim 2, drawn to polypeptides, classified in class 530, subclass 350.

Group III: Claim 3, drawn to methods of making transformed plants, classified in class 800, subclass 278.

In the instant Office Action, the Examiner also required under 35 U.S.C.121 restriction to a single sequence upon election of any one of the Groups.

Applicants respectfully traverse the restriction requirement, and provisionally elect Group II, Claim 2, drawn to polypeptide SEQ ID NO: 69855 for further prosecution.

Applicants submit that the complete examination of the application would be handled most expeditiously by treating all of the pending claims as a single entity. As Section 803 of the MPEP directs, “[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

Applicants submit that the restriction requirement is particularly inappropriate with respect to DNA SEQ ID NO: 11057, which encodes SEQ ID NO: 69855. Applicants contend that, at least, both of these sequences should be examined simultaneously because they are related as nucleic acids and proteins encoded by such nucleic acids. To examine claim 2, the elected sequence SEQ ID NO: 69855, which is directed to proteins encoded by the identified nucleic acids requires the same search as claim 1, to DNA SEQ ID NO: 11057.

Furthermore, Applicants submit that restriction to a single nucleotide sequence is improper, as the Office Action itself indicates that “This notice permits the examination of from one to ten independent and distinct nucleotide sequences in a single application” (*see* instant Office Action, page 2) and Applicants believe that no serious burden would result by the search and examination of at least ten nucleotide sequences.

Examiner asserts that:

“Neither the polynucleotides of Group I nor the polypeptides of Group II are needed to practice the methods of Group III.”

However, a search for claim 3 (Group III), which encompasses plants containing a polypeptide sequence as identified in the sequence listing annotations of Table 1 (*see* instant Application claims, page 42), would also include a search of the sequence of claim 2, whose sequences are annotated in said Table 1. Accordingly, examination of at least Groups I and II and preferably Groups I, II and III together would pose no undue burden to the Examiner. Applicants submit that election to polypeptide SEQ ID NO: 69855, whose annotation in the sequence listing (Table 1, corresponding DNA SEQ ID NO: 11057) details its utility as an ATPase, fully supports the method claimed in claim 3.

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore should be withdrawn.

Should the Examiner have any questions regarding this application, the Examiner is encouraged to contact Applicants' undersigned representative at (314) 694-3602.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence M. Lavin, Jr.", with a large, stylized flourish at the end.

Lawrence M. Lavin, Jr. (Reg. No. 30,768)

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